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VIA ECF

Hon. Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*,
05-md-1720 (MKB) (JAM);
Intuit, Inc. et al. v. Visa Inc., et al., 21-cv-1175 (MKB) (JAM);
Block, Inc. v. Visa Inc. et al., 23-cv-5377 (MKB) (JAM)

Dear Chief Judge Brodie:

Plaintiffs Intuit Inc., Intuit Payment Solutions, LLC (together, “Intuit”), and Block, Inc., formerly known as Square, Inc. (“Square”) write respectfully to request (1) leave to file this short response to Defendants’ December 20, 2024 Reply in Support of their Motion for Injunction Compelling Dismissal of Plaintiffs’ claims (ECF 9517); and (2) permission to file this response under seal, with a publicly-available redacted version to be filed together with all other motion papers on January 6, 2025. This brief letter responds to a misrepresentation of the record in Defendants’ Reply.

* * * *

In their Reply brief, Defendants argue:

Although Intuit and Square suggest that, by opting out, they “indicat[ed] they did not consent to the release in the Settlement Agreement” (Opp. at 23), that action merely indicated that Intuit and Square had claims in their capacities as merchants that they intended to pursue individually. Intuit and Square did not say on their opt-out forms, as they say now, that they “are the principals for purposes of federal antitrust claims arising out of direct purchases,” so their merchant customers had nothing “to give up” in settlement. (Opp. at 21–22, 25.)

Reply Br. at 13 (emphasis in original).

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This claim is false, as demonstrated by the clear language contained in both Intuit's and Square's exclusion requests.

In its opt-out notice, Intuit stated:

[REDACTED]

ECF 9065-8 at 1 (underline emphasis in original, bold and italics emphasis added). This document was previously filed as an exhibit to Intuit's opposition to Defendants' Motion to Enforce—Defendants' previous, failed attempt to dismiss Intuit's PayFac claims.

Similarly, Square's opt-out notice stated:

[REDACTED]

ECF 9069-16 at 1-2 (underline emphasis in original, bold and italics emphasis added). This document was previously filed as an exhibit to Square’s opposition to Defendants’ Motion to Enforce—Defendants’ previous, failed attempt to dismiss Square’s PayFac claims.

The settlement administrator subsequently informed the Court that Intuit and Square had submitted “timely and complete” opt-outs. ECF 7641-1 (Aug. 7, 2019 Report of Class Administrator), Ex. A at 9, 16. Plaintiffs Intuit and Square request that the Court consider both opt-out notices in connection with Defendants’ motion for “injunction.” Both notices are already part of the record, and Defendants’ representation of their contents is demonstrably false.

Dated: December 23, 2024

By: /s/ Adam B. Wolfson
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